

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Orchard View Manor, Inc.**

**FILE NO.: UST 2012-02276**

**NOTICE OF VIOLATION**

**A. Introduction**

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM’s jurisdiction.

**B. Administrative History**

The DEM issued an informal written notice to the Respondent on 30 August 2012 for the violations. The notice required specific actions to correct the violations. Thus far, the Respondent has failed to fully comply with the notice.

**C. Facts**

- (1) The subject property is located at 135 Tripps Lane, Assessor’s Map 409, Block 9, Parcel 1 in the city of East Providence, Rhode Island (the “Property”).
- (2) The Property includes a nursing home and an underground storage tank (“UST”) used for storage of petroleum product (the “Facility”).
- (3) The Respondent owns the Property.
- (4) The Respondent operates the Facility.
- (5) The Facility is registered with the DEM in accordance with Section 6.00 of the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”) and is identified as UST Facility No. 02276.
- (6) The UST is registered with the DEM as follows:

<b>UST ID No.</b>	<b>Date Installed</b>	<b>Capacity</b>	<b>Product Stored</b>
002	15 April 1996	2,000 gallons	Diesel Fuel

- (7) On 29 August 2012, the DEM inspected the Facility. The inspection revealed the

following:

- (a) The “power” status indicator lamp on the *Veeder Root TLS 300C* continuous monitoring system (“CMS”) console was malfunctioning;
  - (b) The spill containment basin was holding liquid;
  - (c) No registration form has been filed with the DEM for the Class A and Class B UST facility operators assigned to the Facility;
  - (d) No trained Class A or Class B UST facility operator is assigned to the Facility; and
  - (e) No list of all of the Class C UST facility operators assigned to the Facility was available.
- (8) On 18 December 2012, DEM received an electronic mail message from Mr. Benjamin Nadrowski on behalf of Respondent. Mr. Nadrowski notified DEM that he would be taking the UST Facility Operators certification exam before 28 December 2012.
- (9) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to correct the violations described in section C.7 above.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM’s UST Regulations, Rule 8.15(B)** – requiring proper maintenance of a CMS.
- (2) **DEM’s UST Regulations, Rule 8.16(A)(1)** – requiring that spill containment basins be kept free of water.
- (3) **DEM’s UST Regulations, Rue 8.22 (A)** – requiring all regulated UST facilities to have a trained and certified Class A and Class B UST facility operator assigned to the Facility.
- (4) **DEM’s UST Regulations, Rule 8.22(A)(4)** – requiring all regulated UST facilities to submit a registration form to the DEM by 1 August 2012 for the Class A and Class B UST facility operators assigned to the facility.
- (5) **DEM’s UST Regulations, Rule 8.22(A)(7)** – requiring all regulated UST facilities to have a list of all of the Class C UST facility operators assigned to each facility.

- (6) **DEM's UST Regulations, Rule 8.22(D)** – requiring that all regulated UST facilities to have a Class C UST facility operator present during all operating hours.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to complete the following **within thirty (30) days of receipt of this NOV**:

- (1) The “power” status indicator lamp on the CMS console shall be repaired or replaced in accordance with Rule 8.15(B) of the DEM’s UST Regulations. Written or photographic verification of compliance shall be submitted to the DEM’s Office of Compliance and Inspection (“OC&I”).
- (2) The spill containment basin shall be evacuated and cleaned in accordance with Rule 8.16(A)(1) of the DEM’s UST Regulations. Written or photographic verification of compliance shall be submitted to the OC&I.
- (3) Respondent shall have at least one Class A, one Class B and one Class C UST facility operator trained, certified and assigned to the Facility in accordance with Rule 8.22 of the DEM’s UST Regulations.
- (4) Submit a completed *Certified UST Operators Registration Form* for the Facility to the DEM’s Office of Waste Management at 235 Promenade Street, Suite 380, Providence, RI 02908-5767, which shall include copies of the operator’s certification documents. Copies of the completed form and the attached documentation shall also be submitted to the OC&I.
- (5) Submit to the OC&I a list of all of the Class C UST facility operators assigned to the Facility, in accordance with Rule 8.22(A)(7) of the DEM’s UST Regulations.
- (6) Submit to the OC&I written verification that the Class A and/or Class B UST facility operator assigned to the Facility is now conducting monthly on-site UST facility inspections in accordance with Rule 8.22(F) of the UST Regulations.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

**Two Thousand Five Hundred Dollars (\$2,500.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within thirty (30) days of your receipt of this NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with this NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
  - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
  - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
One Capitol Hill, 2<sup>ND</sup> Floor  
Providence, RI 02903
  - (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
  - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

- (2) A copy of each request for hearing must also be forwarded to:

Richard M. Bianculli Jr., Esquire  
DEM - Office of Legal Services  
235 Promenade Street, Suite 425  
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the city of East Providence, wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31), as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Richard Bianculli at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

\_\_\_\_\_  
David E. Chopy, Chief

DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

Orchard View Manor, Inc.  
c/o James R. McGuirk, Esq., Registered Agent  
Edwards Wildman Palmer LLP  
2800 Financial Plaza  
Providence, RI 02903

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2012- 02276

Respondent: ORCHARD VIEW MANOR, INC.

GRAVITY OF VIOLATION SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (3) through D(6) – Failure to comply with UST operator training requirements	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500.00
<b>SUB-TOTAL</b>					<b>\$2,500.00</b>

\*Maximum Penalties represent the maximum penalty amounts per day, per violation.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$2,500.00**

## PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with UST operator training requirements

VIOLATION NOS.: D (3) through D (6)

<b>TYPE</b>		
<p>___ <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>X</b> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>___ <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to assign at least one trained and certified Class A, Class B and Class C UST facility operator to the Facility on or before 1 August 2012. Respondent failed to submit a completed Certified UST Operators Registration Form for the Facility to DEM and did not have a list of the Class C UST facility operators assigned to the Facility. At the time of the inspection, there were no trained and certified Class A, Class B or Class C UST facility operators at the Facility.</p> <p>(B) <b>Environmental conditions:</b> The facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The facility is located in the Providence River watershed. Freshwater wetlands are located within 340 feet of the facility.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Diesel fuel is capable of causing significant soil and groundwater contamination if released to the environment. Certain diesel constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) <b>Duration of the violation:</b> Respondent has been non-compliant since 1 August 2012.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by assigning trained and certified UST facility operators to the facility, by submitting the registration form to DEM on or before 1 August 2012 and by maintaining a list of Class C UST facility operators assigned to the facility. Respondent failed to mitigate the non-compliance despite receiving the 30 August 2012 letter from DEM, which required that it do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Respondent was previously cited by DEM for violations of the UST Regulations in a letters issued on 22 December 2005 and 16 September 2008.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent, as owner and operator of the facility, had control over the occurrence of the violations. The UST Regulations expressly require that all regulated UST facilities were to have trained and certified UST facility operators on or before 1 August 2012.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u>  X  </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250